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In The

Supreme Court of the United States

October Term, 1993

ROBERT L. SMITH,

Petitioner,

versus

SCOTT PAPER COMPANY,

Respondent.

On Petition For A Writ Of Certiorari To The Supreme Court Of Alabama

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Were Petitioner's rights to procedural due process violated when the appellate court affirmed summary judgment in favor of respondent on correct but different grounds than those which formed the basis of the trial court's decision?

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OPINIONS BELOW

The Order of the Circuit Court of Mobile County, Alabama granting Summary Judgment in favor of Respondent is reproduced as Appendix B (App. B at 2A through 9A) to Petitioner's (hereinafter "Mr. Smith") petition for a writ of certiorari. The decision of the Supreme Court of Alabama affirming summary judgment is reproduced as Appendix C (App. C at 10A through 13A) to Mr. Smith's petition for a writ of certiorari. The Supreme Court of Alabama's decision denying Mr. Smith's rehearing is reproduced as Appendix D (App. D at 14A through 19A) to his petition for writ of certiorari.

JURISDICTION

The petition for a writ of certiorari was filed by Mr. Smith within ninety (90) days of the date the application for rehearing was denied. Mr. Smith invokes the jurisdiction of this Court pursuant to Section 28 U.S.C. § 1257.

STATEMENT OF THE CASE

I

Introduction

Mr. Smith's petition arises out of a Summary Judgment granted in favor of Respondent Scott Paper Company ("Scott") by the Circuit Court of Mobile County, Alabama. Scott moved for Summary Judgment primarily on the ground of res judicata. The trial court, after consideration of several briefs and evidence submitted by the

parties (including voluminous evidence submitted by Mr. Smith of the alleged fraudulent and outrageous conduct), granted Scott's Motion for Summary Judgment. On appeal, the Supreme Court of Alabama, after reviewing the evidence submitted to the trial court and briefs by both parties, determined that although the doctrine of res judicata was not applicable, summary judgment should be affirmed. The Court found insufficient evidence of fraud and outrage and held under long-standing law in Alabama that a correct judgment will not be reversed even if the trial court has based its judgment on the wrong reasons. Mr. Smith filed an application for rehearing and claimed that affirmance of summary judgment on the ground that there was insufficient evidence to support his fraud and outrage claims violated his right to due process. The Supreme Court of Alabama reconsidered the matter, rejected Mr. Smith's due process arguments and denied his application for rehearing.

Although the basic facts are not in dispute, a review of these facts indicates that the issue of the sufficiency of the evidence with respect to the fraud and outrage claims was put before the trial court by Mr. Smith. Further, a factual review underscores the correctness of the Supreme Court of Alabama's decision that there simply is no substantial evidence of fraud or outrageous conduct in this case.

II

UNDERLYING FACTS

Mr. Smith was and still is an employee of Scott. On October 3, 1988, he strained his back while on the job.

Scott paid Mr. Smith worker's compensation benefits for that injury. Two days later, Mr. Smith returned to work without restrictions and continued to work full time until January 10, 1989, when he was diagnosed with a herniated disc. From October 3, 1988 to January 10, 1989, Mr. Smith did not sustain a new injury.

On January 14, 1989, Mr. Smith applied for worker's compensation benefits for the October 3, 1988 incident. After a medical investigation, Scott denied worker's compensation benefits based on the position that the January back condition was not job related. Mr. Smith then applied for Accident and Sickness ("A & S") benefits. A & S benefits arise from a medical insurance program Scott provides for its employees for non-work related injuries. When Mr. Smith applied for his A & S benefits, he stated on the claim form that his back injury was job related. As Mr. Smith well knew, A & S benefits were only for those injuries that were not job related.[1] Since Mr. Smith stated that the injury was job related, his A & S claim was not processed.

III

PROCEDURAL HISTORY OF THE CASE

Mr. Smith retained an attorney and filed a worker's compensation action in which the trial court determined that the injury was job related. Mr. Smith received a

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[1] Mr. Smith stated in his deposition that he knew A & S benefits were only for injuries that were not job related. He had been paid A & S benefits by Scott on several previous non-job related claims.

judgment and Scott has paid his worker's compensation benefits pursuant to that judgment. Some months later after he returned to work at Scott, Mr. Smith filed this action against Scott for fraud and outrageous conduct for Scott's alleged failure to pay benefits on demand for the back injury.

After substantial discovery was completed, Scott moved for summary judgment primarily on the ground that the plaintiff's claims were barred by the doctrine of res judicata. The issues were briefed several times by the parties, and while the motion was still pending, Mr. Smith submitted "a large spiral notebook containing several depositions and other documents produced by Scott in response to various discovery requests".[2] These documents had nothing to do with the application of the doctrine of res judicata. On February 19, 1992, Mr. Smith's attorney wrote a letter to the trial court requesting that the trial court consider "evidence" of the merits of Mr. Smith's claims of fraud and outrage against Scott. (Appendix A). Mr. Smith has stated in his petition that this evidence was not filed for the purpose of rebutting Scott's motion for summary judgment. However, as the February 19, 1992 letter clearly indicates, this is simply not true.[3]

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[2] This quotation describing the documents submitted is from Mr. Smith's attorney's letter to the trial court dated February 19, 1992 and attached hereto as Appendix A.

[3] In his letter of February 19, 1992 to the trial court Judge, the attorney for Mr. Smith stated, "The deposition testimony and documentary evidence already of record establishes a pattern and practice of such fraudulent conduct. Please, therefore, consider this along with the arguments contained in our briefs

After the Motion for Summary Judgment was granted and Mr. Smith elected to appeal, Mr. Smith filed a Motion to Expand the Record on Appeal to include all of the evidence on the merits of the case submitted by Mr. Smith in opposition to Scott's Motion for Summary Judgment. This Motion to Expand the Record on Appeal was granted and, consequently, Mr. Smith's "evidence" of Scott's alleged fraudulent and outrageous conduct was submitted to the Supreme Court of Alabama.

After reviewing the evidence submitted by Mr. Smith, the Supreme Court of Alabama correctly determined that there was simply no substantial evidence of fraud or outrageous conduct and affirmed summary judgment by applying the long standing rule in Alabama that a correct judgment will not be reversed even if the trial court has based it on the wrong reasons.[4]

In his application for rehearing to the Supreme Court of Alabama, Mr. Smith argued that his rights to due process had been violated by the court's application of the correct judgment rule. Contrary to Mr. Smith's contention in his petition, the Supreme Court of Alabama did not agree "impliedly" or otherwise that a due process violation did occur. The Court rejected the same argument that plaintiff makes to this Court by denying the application for rehearing and affirming the trial court's decision.

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when you make your ruling on defendant's Motion for Summary Judgment." (App. A at A-2, 3).

[4] As Mr. Smith has indicated in his petition, the "correct judgment rule" has been adopted by every state in the union.

SUMMARY OF REASONS FOR DENYING THE WRIT

The petition should be denied because Mr. Smith's right to due process has not been violated in this case. Mr. Smith has received the requisite process necessary to satisfy the Constitutional requirements of the Due Process Clause of the Fourteenth Amendment. The petition should also be denied because Mr. Smith has asked the Court to create a subjective exception to a long standing correct judgment rule which has been universally adopted by the courts of the various states of this union. Such an exception would render a correct judgment rule virtually meaningless.

REASONS FOR DENYING THE WRIT

I.

Mr. Smith's right to due process has not been violated in this case. The right to due process under the Fourteenth Amendment of the United States Constitution requires that some form of a hearing is necessary before an owner is deprived of a protected property interest. *Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 102 S.Ct. 1148 (1982). Mr. Smith's primary reason for claiming a violation of due process is his mistaken belief that he had "no notice" that the Supreme Court of Alabama would affirm summary judgment on a ground other than the ground utilized by the trial court in granting the summary judgment. Clearly, Mr. Smith and his counsel had notice that the judgment below might be affirmed on other grounds because the correct judgment rule has been in existence in

Alabama for decades. Furthermore, since Mr. Smith specifically requested that this "evidence" relating to the merits of his claim be part of the record on appeal, it is obvious that Mr. Smith knew or should have known that the Supreme Court of Alabama could review and consider the evidence in reaching its decision.

Although Mr. Smith now takes the position that the numerous documents he filed in opposition to the motion for summary judgment were to "acquaint the trial court with the facts surrounding his claims", review of the letter to the trial judge from Mr. Smith's attorney (App. A) shows that Mr. Smith submitted these documents for the purpose of having the trial court examine the merits of his claim. By submitting volumes of evidence that had no relation to the res judicata issue, Mr. Smith himself put the issue of the sufficiency of evidence before the trial court and ultimately before the Supreme Court of Alabama. It was Mr. Smith who originally asked the trial court to consider the sufficiency of the evidence as an alternative ground for denying the motion for summary judgment. Mr. Smith cannot now claim that he had no notice that the issue of the sufficiency of the evidence could be considered.

Mr. Smith also claims that discovery was incomplete and he was not given the opportunity to submit all of his evidence. Contrary to Mr. Smith's petition, pendency of discovery does not bar summary judgment. *Lightfoot v. McDonald*, 587 So. 2d 936 (Ala. 1991). If a motion for summary judgment is made prior to discovery being complete, the burden is on the non-moving party to show that additional discovery is crucial to his case. *Id.* at 938. Mr. Smith has never made or attempted to make such a

showing. Mr. Smith has never suggested to the trial court, the appellate court or this Court what further discovery was required nor has he enumerated *any* unpresented evidence of Scott's alleged fraudulent or outrageous conduct.[5]

The requirements of due process of law "are not technical nor is any particular form of procedure necessary". *Mitchell v. W.T. Grant Co.*, 416 U.S. 600, 40 L.Ed. 2d 406, 94 S.Ct. 1895 (1974). In addition, due process does not require a full evidentiary hearing on every issue. *Kunzelman v. Thompson*, 799 F.2d 1172 (7th Cir. 1986). Mr. Smith's property interest, i.e., his cause of action, was not taken away without notice and the opportunity to be heard. Mr. Smith filed suit in Circuit Court of Mobile County, Alabama, asserting his claims against Scott. Mr. Smith has had his day in court. He had sufficient notice and adequate opportunity to present his case to the trial court and the Supreme Court of Alabama on appeal and rehearing. Mr. Smith made the same due process arguments to the Supreme Court of Alabama that he is making here and the court rejected these arguments. Simply stated, Mr. Smith's rights to due process have not been violated in this case.

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[5] Discovery in this case was substantially complete. Mr. Smith has deposed the Manager of Safety, Health and Security, the Supervisor of Scott Paper Company Medical Center, the Labor Relations Associate, the Group Benefits Assistant and the Compensation and Benefits Assistant. He has not requested the deposition of any other person or entity. Furthermore, Scott produced 4,915 pages of documents relating to A & S claims of other Scott employees as well as other documents and files.

II.

Another reason for denying Mr. Smith's petition is that Mr. Smith has asked this court to create a "due process exception" to the long standing correct judgment rule.[6] The correct judgment rule, as applied by the Supreme Court of Alabama in this case, is as follows:

> A correct judgment, however, will not be reversed even if the trial court has based it on the wrong reasons. *Boykin v. Magnolia Bay, Inc.*, 570 So. 2d 639 (Ala. 1990).

App. 12A. By its very nature, the correct judgment rule often, if not always, addresses arguments not made to the trial court.

For instance, in *Boykin v. Magnolia Bay, Inc.*, 570 So. 2d 639 (Ala. 1990), the case relied on by the Supreme Court of Alabama, the parents of a minor child brought an action against an abortion clinic to recover under theories of outrage, trespass and assault and battery for

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[6] As Mr. Smith has indicated in his brief, the correct judgment rule is applied by every state in the Union. In Alabama, the correct judgment rule has been applied since 1844. See *Shepard v. Nabors*, 6 Ala. 631 (Ala. 1844). In addition, this Court has recognized the principles of the correct judgment rule. In *United States v. Arthur Young & Co.*, 465 U.S. 805, 814, n 12, 79 L.Ed. 2d 826, 104 S.Ct. 1495 (1984), this Court held "our precedents establish that a prevailing party may urge any ground in support of the judgment whether or not that ground was relied upon *or even considered* by the court below. [citations omitted] (emphasis added)." See also *Powers v. United States*, 1993 WL 262673 (11th Cir. 1993) (District Court's judgment may be affirmed on any ground that appears in the record, whether or not the ground was relied upon or even considered by the court below.)

an abortion conducted without parental or judicial consent. The trial court granted summary judgment in favor of the defendants on the parents' claim of outrage based on the grounds that the claim was derivative in nature and therefore barred by the child's misrepresentations. In affirming summary judgment pursuant to the correct judgment rule, the Supreme Court of Alabama found the basis of the trial court to be incorrect yet affirmed on the ground that there was no evidence of fraud or outrageous conduct with respect to the parents' claims despite the fact that the sufficiency of the evidence was not at issue in the trial court.

As in Mr. Smith's case, the issue of whether there were sufficient facts to support a claim of outrageous conduct was not before the trial court in the *Boykin* case. Under Mr. Smith's theory, the Supreme Court could not have affirmed in *Boykin* because that issue was not raised at the trial court level. As can be seen from this example, the exception to the correct judgment rule proposed by Mr. Smith would eviscerate the rule and set aside long-standing precedent in Alabama and every other jurisdiction.

CONCLUSION

Mr. Smith's rights to due process have not been violated in this case. Mr. Smith had a claim against Scott and, pursuant to his constitutional rights, filed a lawsuit against Scott regarding this claim. Unfortunately for Mr. Smith, the court determined that Scott was entitled to judgment as a matter of law. Despite the fact that he was

unsuccessful in his claim, Mr. Smith's rights to due process were not violated. Accordingly, the petition for writ of certiorari should be denied.

Respectfully submitted,

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APPENDIX A

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February 19, 1992

[Attorneys Names Omitted In Printing]

HAND DELIVERED

Honorable Ferrill D. McRae
Circuit Court Judge
Mobile County Courthouse
Mobile, Alabama 36602

Re: *Robert L. Smith v. Scott Paper Co., et al.* CV-90-003447

Dear Judge McRae:

Pending before Your Honor is Defendant, Scott Paper Company's Motion for Summary Judgment. Scott alleges plaintiff's claims are barred by the doctrine of *res judicata*. Both parties have submitted several briefs on this issue.

In addition to the briefs, plaintiff submitted a large spiral notebook containing several depositions and other documents produced by Scott in response to various discovery requests. This evidence supports plaintiff's view that defendant's Motion for Summary Judgment is due to be denied. Specifically, the notebook contains evidence supporting plaintiff's assertion that Scott engaged in a pattern and practice of fraudulently mishandling its employees' workmen's compensation and sickness & accident benefits claims. This voluminous evidence was

presented so the Court could appreciate that the issues involved in this litigation involve far more than the mishandling of just Robert Smith's workmen's compensation and sickness & accident claims.

For example, in the notebook at index tab 9(a) there are sickness & accident benefits claims forms for sixty-nine (69) of Scott's employees. Review of these forms reveals evidence of fraud in the following manners:

A. Several of the employees completed sickness & accident claims forms wherein they indicated that their injury was work related, yet Scott never completed any Employer's First Report of Injury forms nor processed any workmen's compensation claims.

B. Several of the employees completed sickness & accident claims forms wherein there was no indication their injuries were work related, yet Scott completed Employer's First Report of Injury forms and processed claims for workmen's compensation.

C. Several of the employees completed sickness & accident claims forms and indicated their injuries were not work related, yet Scott completed Employer's First Report of Injury forms and processed workmen's compensation claims.

D. Several of the employees completed sickness & accident claims forms wherein they indicated their injuries were work related and Scott processed Employer's First Report of Injury forms and workmen's compensation claims.

The examples of Scott's treatment of other employees' injury claims supports plaintiff's assertion that Scott fraudulently manipulated the process for reporting on-the-job injuries so that those employees who were actually injured on the job could not receive the full benefits to which they were legally and contractually entitled.

Moreover, the evidence is admissible for impeachment of several of the positions taken by Scott through its representatives in their depositions. For example, when plaintiff deposed Anna C. Bowden, Scott's supervisor of the medical center who oversees administration involving workmen's compensation, she testified that when an employee indicates on his sickness & accident claim form that the injury is job related, the employee will receive workmen's compensation benefits, but not sickness and accident benefits. (Dpn., Anna C. Bowden, August 21, 1991, p. 17 – Notebook Exhibit Tab 2). This testimony is clearly contradicted by the documents described above which reflect examples of sickness & accident claims forms containing indications that the injury was work related yet Scott failed to prepare Employer's First Report of Injury forms or otherwise process workmen's compensation claims.

The evidence in this case is voluminous. The fraudulent conduct complained of in plaintiff's complaint affects many others besides Robert Smith. The deposition testimony and documentary evidence already of record establishes a pattern and practice of such fraudulent conduct. Please, therefore, consider this along with the arguments contained in our briefs when you make your ruling on defendant's Motion for Summary Judgment.

Finally, please note that Your Honor has set this matter for trial on March 30, 1992. Please, therefore, let us have your ruling at your earliest convenience so that we will know whether to continue preparing for trial or whether we should instead budget time to begin preparing for an appeal.

Respectfully submitted,

/s/ Robert T. Cunningham, Jr.

RTCjr/kec

cc: Broox G. Holmes, Esq. (Hand Delivered)